

Approved Minutes

Friend of the Court Bureau Advisory Committee Child Support Formula Standing Subcommittee

Tuesday, January 8, 2002

MEMBERS PRESENT: Kent Weichmann, Roland Fancher, Hon. Michael Skinner, Patti Holden and Kim Lem

MEMBERS ABSENT: Terry Adams and Ron Papke

STAFF PRESENT: Bill Bartels and Darla Brandon

PUBLIC ATTENDANCE: None

I. CALL MEETING TO ORDER

The meeting was called to order by Chairperson Kent Weichmann at 1:34 p.m.

Introduction of New Members

Since three new members, Hon. Michael Skinner, Ms. Kim Lem and Roland Fancher have been added to the subcommittee, members introduced themselves.

II. APPROVAL OF THE AUGUST 14, 2001 MEETING MINUTES

Mr. Weichmann made a motion to approve the minutes with an amendment to the spousal support section; the section refers to the adjustment made to parents' incomes for spousal support in calculating child support. The committee is not interested in creating spousal support guidelines. Ms. Holden seconded the motion. **Motion passed.**

III. PUBLIC COMMENT / CORRESPONDENCE

The committee reviewed correspondence from Debra Flynn, Craig Bergum, and Jodi Welch. Friend of the court bureau analysts have provided responses to their correspondence.

Mr. Bartels provided several handouts/articles to the committee regarding the latest information nationally with regard to health insurance and background information of costs by private companies. The first is an article reprint *Private Employer-Sponsored Health Insurance: New Estimates by State* regarding healthcare from the Federal Government's Agency for Healthcare Research and Quality (DHHS Public Health). It contains information for consideration regarding employer offered health care coverage and cost estimates. Exhibit four contains cost information on what an average family has to pay towards healthcare. Estimates are based upon 1996 figures. Committee members noted that there have been dramatic changes since 1996 in health care premiums and the amount of premiums that families have to pay.

In the 21 Million Children's Health: Our Shared Responsibility booklet issued by DHHS, Chapter 3 discusses how to determine which parent is required to have healthcare coverage. Anecdotal information suggests that many orders and friend of the court recommendations are requiring both parents to cover the children without regard to cost or effectiveness of coverage. There was a discussion that both parents are statutorily required to cover the children and therefore shouldn't all orders contain a provision. MCL 552.605a(2) states that "the court shall require one or both parents obtain or maintain health care coverage that is available to them at a reasonable cost, as a benefit of employment, for the benefit of the minor children of the parties . . ." Therefore the court may assign to one or both, and is not required always to order both.

IV. PUBLIC COMMENT

No public comment.

V. OLD BUSINESS

Imputation

The subcommittee will submit two separate opinions and a dissent with the final recommendation for changes to the imputation section to the advisory committee. The subcommittee tabled Mr. Adams's imputation rationale until the next meeting.

Different Custody Arrangements for Children in a Family

Mr. Weichmann will provide various cases for comparison to the subcommittee at the next meeting. The issue the committee has been discussing is when child support is calculated for children in cases split in sole custody and shared economic responsibility arrangements.

Existing Support Orders - child deductions (offensive v defensive)

Kent Weichmann's handout dated 10/8/2001 discusses earlier case law (Schneider (1971) and Jacobs (1982)). When the guideline was originally issued, only prior support orders could be considered as a deduction from a payer's income when a payer was seeking a change. However when a payee sought a change, subsequent support orders were allowed to be deducted from the payer's income. Several scenario's were discussed regarding subsequent support orders, and what happens with low and high first orders.

The guideline was subsequently changed and allows all support orders, except for the one in the case under consideration, to be deducted from the payer's income. One reason for allowing this change was to equally protect the interests of subsequent children.

Shared Economic Responsibility

Mr. Weichmann will provide additional charts for this issue for the next meeting.

Alimony/Spousal Support Adjustments to Income

Two unpublished court of appeals opinions were included in the handouts (Lengemann (1997) and Younessi (1999)). Mr. Weichmann discussed how alimony and spousal support are currently calculated in child support cases with minor children. Mr. Weichmann's handout (dated 10/9/2001) explains how alimony is usually more discretionary than the primary obligation of child support. After support is calculated court decides if any additional transfer of income is necessary for the family, and the amount left over is the alimony/spousal support. The most common approach is to look at the total family support and assess child support and alimony.

Currently, the formula allows alimony/spousal support as a deduction from the payer's income and an addition to the payee's income. Higher payee income and lower payer income causes child support to decrease and more alimony needs to be paid.

Mr. Weichmann made a motion to modify the allowable deductions from gross income in Section II A type of income #29 and Section II K deduction from income #1 to no longer allow deducting or adding periodic alimony and spousal support in cases between the parties involved in the current case. The motion was seconded. **Motion passed.**

Deviation - Clarification of Effect of Burba case

A motion was made to add Mr. Adams paragraph into the Michigan child support formula Manual in Section 1A (see handout). Mr. Fancher suggested changing of "didn't" to "did not". Ms. Holden seconded the modified motion.

Section I A Application of and Deviation from the Formula should be modified to include the following paragraph at the end of the section:

"The Michigan Supreme Court has further clarified that deviations cannot be based simply on disagreement with the policies embodied in the statutes or the manual. In *Burba v Burba*, 461 Mich 637 (2000), the court reversed an order deviating from the formula where the trial court indicated that the basis of its deviation was simply that it did not follow the formula when income disparities amount the parties were great. In reversing, the Court found that the manual dealt directly with income disparities in the formula, and held in effect that the simple disagreement with the policies implicit in the formula cannot be the basis for a deviation. It therefore appears that the only basis for deviation from the formula is a finding that application of the policies would be unjust and inappropriate in that specific case, including a discussion of the factors that make the case unusual, and how those factors make application of the formula unjust or inappropriate."

Motion passed.

Child Support Formula Manual Quadrennial Review - PSI

Mr. Bartels discussed the contract with Policy Studies, Inc. to help improve the four year review process of the formula. The purpose of the review is to look at updated economic numbers as well as looking at provisions in the guideline. The report will be done March 31, 2002 and a presentation within two weeks from that date. The committee will have until July 31, 2002 to

incorporate the recommendations into the 2003 child support formula manual. The final decision of what will be input into the 2003 formula will come from the State Court Administrator.

It is very important that every member plan on attending all meetings from 4/15/02 until 7/31/02. The committee will be covering all of the material suggested in the study. This period will probably represent some of the most significant changes to the manual since the inception of the original guideline.

VI. New Business

There is no new business.

It was moved and seconded to adjourn the meeting. All agreed. The meeting was adjourned at 3:24 p.m.

The next meeting of the Child Support Formula Subcommittee is schedule for 1:30 p.m., Tuesday, February 12, 2002, at the State Court Administrative Office.

Respectfully submitted,

Darla Brandon

E:\FOC\ChildSupFormula\MINUTES\2002\FSC02-01-08.wpd